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Dirty Money: Refunding California's Unconstitutional Smog Impact Fee

Kate A. Leary

Code Sections Affected

Revenue and Taxation Code § 17139.5 (new); Vehicle Code §§ 1673, 1673.2, 1673.4, 1673.5, 1673.6, 1673.7 (new).

AB 809 (Lowenthal); 2000 STAT. Ch. 31

Revenue and Taxation Code §§ 6909, 6910 (new), 6263 (amended), 6261, 6262 (repealed).

SB 215 (Karnette); 2000 STAT. Ch. 32

*"Some would argue that the state needs the money . . . [b]ut the fee is clearly illegal. It violates interstate commerce, and we have no choice but to give it back . . . This is clearly a case where the state erred. It made a mistake."*¹

I. INTRODUCTION

Beginning in October of 1990, persons transporting vehicles from out-of-state into California faced a disconcerting mandate when they arrived at the Department of Motor Vehicles to register their automobiles.² As a prerequisite to registering their vehicle these people were made to pay a \$300 "Smog Impact Fee."³ Although the State of California claimed that the purpose of this fee was to abate the environmental impacts associated with out-of-state vehicles, many complained about the fee and harbored suspicions about its true purpose.⁴

In 1999, several motorists who paid the fee brought a lawsuit against the State of California and various state agencies claiming that collection of the fee violated

1. Patrick Hoge, *State Will Refund Illegal Smog Fees*, FRESNO BEE, Nov. 11, 1999, at A19, available in LEXIS, News Group File-All 102G3W (quoting Governor Gray Davis at his press conference announcing that he would not appeal a ruling that found California's smog impact fee unconstitutional).

2. Dan Walters, *Davis Can Learn Big Lesson from Smog Fee*, VENTURA COUNTY STAR, Jan. 9, 2000, at B9, available in LEXIS, Newspaper Stories-Combined Stories File 102G3W.

3. CAL. REV. & TAX. CODE § 6262(a) (West 1998) (repealed by Chapter 32).

4. See Steven A. Capps, *Smog Fees to be Refunded with Interest*, ORANGE COUNTY REG., June 9, 2000, at A4, available in 2000 WL 4836405 (recounting one such complaint made by a woman who "argued and argued" about the validity of the fee, to no avail).

both the United States and the California Constitutions.⁵ Following a judgment in favor of the motorists, California enacted Chapters 31 and 32.⁶ These statutes repeal the Smog Impact Fee, thus providing long-awaited recompense to those who paid the fee.⁷ To this end, the newly enacted statutes set up a program for handling claims which arise in respect to these fees,⁸ refund the money to its rightful owners,⁹ and resolve disputes which might arise during the refund process.¹⁰

II. LEGAL BACKGROUND

A. Brief History of Vehicle Emissions Regulation in California

In 1955, Congress enacted the Clean Air Act in response to the threat of negative impacts on public safety due to increased air pollution.¹¹ The Act developed a system which works to preserve the quality and quantity of existing clean air in the United States.¹² Among the elements of this program, Congress included the setting and regulation of emission standards for new motor vehicles¹³ by the Environmental Protection Agency Administrator.¹⁴ In doing so, Congress intended that these EPA specifications supercede any state criterion for the control of emissions.¹⁵

California began controlling vehicle emissions in 1960, prior to the inclusion of emissions regulation power in the Clean Air Act¹⁶ and before any other state in the nation undertook to regulate emissions independent of federal directives.¹⁷ Under the terms of the Act, California's history of vehicle pollution control entitles the

5. *Jordan v. Dep't of Motor Vehicles*, 75 Cal. App. 4th 449, 454, 89 Cal. Rptr. 2d 333, 336 (1999).

6. Capps, *supra* note 4, at A4.

7. See 2000 Cal. Legis. Serv. ch. 32, sec. 2-3, at 86 (repealing Sections 6261 and 6262 of Revenue and Taxation Code, which imposed the fee).

8. CAL. VEH. CODE § 1673.2 (enacted by Chapter 31).

9. *Id.*

10. *Id.* § 1673.4 (enacted by Chapter 31).

11. See 42 U.S.C.A. § 7401(b)(1) (West 1995) (declaring that the purposes of the Act are "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population").

12. See 39A C.J.S. *Health & Environment* § 92 (1976) (noting that this "non-degradation policy" provides for areas of clean air which exceed national quality standards to be protected from any deterioration, however trivial).

13. 42 U.S.C.A. § 7521(a)(1) (West 1995).

14. See 61B AM. JUR. 2D *Pollution Control* § 564 (1999) (discussing EPA established standards for the release of any air pollutant "from any class or classes of new motor vehicles or new motor vehicle engines over their useful life").

15. See 42 U.S.C.A. § 7543(a) (West 1995) (providing that "[no] state . . . shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles . . . subject to this part").

16. *Jordan v. Dep't of Motor Vehicles*, 75 Cal. App. 4th 449, 454, 89 Cal. Rptr. 2d 333, 336-37 (1999).

17. See 61B AM. JUR. 2D *Pollution Control* § 568 (1999) (observing that California is the only state which had emission control guidelines in place on March 30, 1966, the date on which the federal standards took effect).

state to a waiver of the federal pre-emption of state authority.¹⁸ In accordance with the provisions of this waiver, in order for a vehicle to be registered or sold in the state, it must be "California-certified."¹⁹ The rationale commonly offered for California's "special" standard is that the State desired separate regulations because it was concerned with a different type of pollution than the rest of the nation.²⁰

B. Existing California Law: Collection of Smog Impact Fees

Existing law dictates that a vehicle must be California-certified in order to be admitted as a "new" vehicle for purposes of sale or registration in the state of California.²¹ Furthermore, any vehicle registered in California must take and pass a smog check test every two years.²² In 1990, the California Legislature placed an additional burden on owners of used, non-California-certified motor vehicles by requiring them to pay a \$300 smog impact fee at the time they first registered their vehicle in the State.²³ The law detailed where the fee should be deposited upon collection by the Department of Motor Vehicles²⁴ and provided that a vehicle emission control label must be affixed to all new vehicles sold in California.²⁵

The Legislature's stated purpose in imposing the fees was to "ensure equity;"²⁶ in other words, because out-of-state cars did not meet the same emission standards

18. See 42 U.S.C.A. § 7543(b)(1) (West 1995) (permitting a state which adopted emission standards prior to March 30, 1966 to waive federal standards where the state's own requirements are no less protective of public health and safety than the federal regulations); 61B AM. JUR. 2D *Pollution Control* § 568 (1999) (explaining that, "since California is the only state which had adopted emission control standards before March 30, 1966, it is the only state eligible for a waiver of federal pre-emption").

19. *Jordan*, 75 Cal. App. 4th at 455, 89 Cal. Rptr. 2d at 337; see also *\$300 Smog Impact Fee for Vehicles Not Meeting California Emission Standards*, PR NEWSWIRE, Oct. 15, 1990, available in LEXIS, NewsGroup File-All 102G3W (stating that vehicles which are California-certified will usually have a label located in the engine compartment identifying them as such).

20. See Ralph Vartabedian, *California Sued Over Smog Tax on Cars Brought In*, L.A. TIMES, Oct. 29, 1998, at W1, available in LEXIS, Newspaper Stories, News Group File-All 102G3W (commenting that "California wanted a set of regulations separate from federal standards, saying it was less concerned about carbon monoxide emissions that ranked high in the rest of the country and more concerned about oxides of nitrogen").

21. CAL. HEALTH & SAFETY CODE § 43151(a) (West 1996).

22. *Id.* § 44011 (West Supp. 2001).

23. CAL. REV. & TAX. CODE § 6262(a) (West 1998); SENATE FLOOR ANALYSIS OF SB 215, at 2 (May 23, 2000).

24. See CAL. REV. & TAX. CODE § 6262(d) (West 1998) (dictating that any smog impact fee collected be deposited in the State's General Fund until July 1, 1998, after which fees would be deposited in the High Polluter Repair or Removal Account); 58 CAL. JUR. 3D *State of California* § 73 (1980) (describing the general fund as "consist[ing] of money received into the treasury and not required by law to be credited to any other fund"); *Courts Put End to Smog-Tax Shakedown*, ORANGE COUNTY REG., Oct. 7, 1999, at B8, available in 1999 WL 30106470 (explaining that the High Polluter Repair and Removal Account funds a program which allows the DMV to assist low-income residents with payment for smog checks and aids its efforts to "remove old, polluting cars from the road").

25. See CAL. REV. & TAX. CODE § 6262(c)(3) (West 1998) (defining a "vehicle emission control label" as "the permanent label that vehicle manufacturers are required to affix to motor vehicles certified by the State Air Resources Board for sale in California").

26. *Id.* § 6261(d) (West 1998) (repealed by Chapter 32).

as the costlier California-certified vehicles, requiring owners of out-of-state vehicles pay an extra fee was not unjust.²⁷ Despite this seemingly valid rationale, the State's decision to collect smog impact fees was never without objection.²⁸ From early on, many felt that the fee had little or nothing to do with environmental protection²⁹ and was enacted solely to raise revenue at a time when California was rapidly sliding into a deep recession.³⁰ Others found the fee to be unfair because, regardless of whether their vehicle was fit to pass the smog-check (and thus meet California air-quality standards), they were nevertheless forced to pay the \$300.³¹ These two main complaints eventually became the basis of a major lawsuit challenging the constitutionality of the tax and were, as a result, instrumental in securing justice for over 1.7 million out-of-state motorists.³²

C. Constitutionality of Smog Impact Fees: The Jordan Decision

Elise Ramos is one of the motorists who paid the smog impact fee when she registered her out-of-state vehicle upon entering California.³³ During that same year, her former husband, Barron Ramos, was a law student at the University of San Diego.³⁴ Ramos happened to be studying interstate commerce law at the time Elise paid the fee and recognized that the commerce clause of the United States Constitution prohibited its imposition.³⁵ Ramos, a law clerk at the time, enlisted the assistance of his boss and filed a legal challenge to the constitutionality of the smog impact fee³⁶ against the State of California ("the State"), the Department of Motor Vehicles (DMV), and the State Board of Equalization (SBE).³⁷

27. *Id.* § 6261(a); Ed Mendel, *Davis Says State Must Pay Back Smog Fees*, SAN DIEGO UNION-TRIB., Nov. 11, 1999, at A1, available in 1999 WL 29193110.

28. See Ralph Vartabedian, *Critics Fuming as State Panel Rejects Bill to End Smog Tax*, L.A. TIMES, Apr. 15, 1999, at W8, available in 1999 WL 2149315 (revealing that many Californians felt the fee was unfair and wanted a refund even before the *Jordan* decision came down).

29. See Dan Walters, *Smog-Tax Refunds Get Choked Off*, FRESNO BEE, May 2, 2000, at A9, available in LEXIS, Newspaper Stories, Combined Papers File 102G3W (claiming that the fee "was imposed despite advice from the Legislature's own lawyers that it was unconstitutional," an omen of events to come).

30. See Walters, *supra* note 2, at B9 (opining that the fees were enacted in 1991 "simply because politicians needed more money to balance their budget" and that non-residents who registered their vehicles were "targets of opportunity because they lacked political clout").

31. See Michael Gardner, *Former Clerk's Fight Against Illegal Smog Fee: A Case Study*, SAN DIEGO UNION-TRIB., June 9, 2000, at A3, available in 2000 WL 13969446 (presenting, among others, the story of a Sacramento woman who was forced to pay the fee even though her car ran on diesel and did not require a smog-test to enter the state).

32. *Jordan v. Dep't of Motor Vehicles*, 75 Cal. App. 4th 449, 470, 89 Cal. Rptr. 2d 333, 348 (1999).

33. Miguel Bustillo, *Man's Crusade Proves Costly to State Capitol*, L.A. TIMES, Jan. 10, 2000, at A3, available in 2000 WL 2199512.

34. Gardner, *supra* note 31, at A3.

35. *Id.*

36. See *id.* (stating that Ramos and his boss, San Diego attorney Norman Blumenthal, were joined by prominent San Diego attorney Bill Lerach and his partners in the suit).

37. *Jordan*, 75 Cal. App. 4th at 453-54, 89 Cal. Rptr. 2d at 336.

Ramos' suit was consolidated with those of three other plaintiffs who were similarly opposing the fee in the case of *Jordan v. Department of Motor Vehicles*.³⁸ In addition to seeking a refund of the fee, the petitioners in *Jordan* sought a declaration that the fee was unconstitutional.³⁹ The primary argument made on their behalf was that the smog impact fee was facially discriminatory and violated the dormant commerce clause of the United States Constitution because it treated out-of-state vehicles differently than California-certified vehicles without any justification.⁴⁰

The commerce clause gives Congress the power "[t]o regulate Commerce . . . among the several States...."⁴¹ Additionally, a "dormant" or "negative" aspect of the commerce clause exists, the purpose of which is to limit one state's regulation of interstate commerce, if such regulation is discriminatory or overly burdensome.⁴² As a general rule, if a regulation discriminates against interstate commerce in any manner, it is "virtually *per se* invalid."⁴³ A discriminatory regulation will be held invalid unless its proponents can show that it serves a "legitimate local purpose" and that no "reasonable nondiscriminatory alternatives" to the regulation exist.⁴⁴

The court found discrimination in this instance because out-of-state vehicles had to pay the fee while in-state vehicles did not—the former were "burdened" by the tax while the latter "benefitted" from this differential treatment.⁴⁵ Furthermore, the petitioners in *Jordan* claimed that the Smog Impact Fee served no legitimate purpose since no evidence existed that California-certified vehicles were less polluting than federally-certified vehicles. They also noted that "reasonable, nondiscriminatory alternative[s]" existed, such as charging the fee based on the actual amount of pollution produced by the vehicle, rather than forcing all owners of out-of-state vehicles to pay the fee, irrespective of their vehicle's emission levels.⁴⁶

The court, in finding a violation of the commerce clause, necessarily rejected defendant's arguments in support of the fee.⁴⁷ Defendants claimed that there could be no discrimination because California-certified and federally-certified vehicles are two different and distinct products and one must look at "similarly situated entities

38. *Id.* at 453, 89 Cal. Rptr. 2d at 336.

39. *Id.*

40. Mendel, *supra* note 27.

41. U.S. CONST. art. I, § 8, cl. 3.

42. *Oregon Waste Systems, Inc. v. Dep't of Env't. Quality*, 511 U.S. 93, 99 (1994); see also James B. Chapman II, Comment, *Economic Protectionism: Illinois' Wrong Choice for Complying with the 1990 Clean Air Act Amendments*, 20 S. ILL. U. L. J. 313, 313 (1996).

43. *Oregon Waste*, 511 U.S. at 99.

44. *Id.* at 100-101.

45. *Jordan*, 75 Cal. App. 4th at 460-61, 89 Cal. Rptr. 2d at 340-41.

46. *Id.*

47. *Id.* at 460-62, 89 Cal. Rptr. 2d at 341-42.

for purposes of a constitutional comparison.”⁴⁸ Defendants failed to recognize a major flaw in this argument:⁴⁹ in order for California-certified and federally-certified vehicles to be considered constitutionally “distinct,” they must serve different markets.⁵⁰ This was not the case here, as both types of vehicles are used by Californians.⁵¹

Petitioners made a second challenge to the fee’s constitutionality by arguing that it violated article XIX of the California Constitution.⁵² This section provides that any revenue generated from taxes placed upon vehicle use or operation should be used for certain transportation purposes.⁵³ Petitioners pointed out that the funds collected were not used for any of these enumerated purposes,⁵⁴ nor were the funds exempt from the strictures of article XIX, because they did not constitute a sales or use tax.⁵⁵

The trial court agreed with Petitioner’s commerce clause argument and found that, because the fee was based solely on where the vehicle was purchased, it was facially discriminatory.⁵⁶ Furthermore, the court held that defendants failed to discuss whether less-burdensome alternatives to the fee existed.⁵⁷ On the California Constitutional issue, the court found that the fee was not a sales or use tax but merely a registration fee.⁵⁸ Because revenues collected were put into the General Fund and not used for transportation purposes, the Smog Impact Fee violated article XIX of the California Constitution.⁵⁹

The Court of Appeal ultimately affirmed the lower court’s findings on these issues.⁶⁰ However, it reversed an order by the trial court which required defendants to file refunds on behalf of all motorists who paid the fee.⁶¹ The reason given for this

48. *Id.* at 460, 89 Cal. Rptr. 2d at 340-41; *see also* *General Motors Corp. v. Tracy*, 519 U.S. 278, 298 (1997) (indicating that, for purposes of review under the dormant commerce clause, “any notion of discrimination assumes a comparison of substantially similar entities . . . [W]hen the allegedly competing entities provide different products, . . . there is a threshold question whether the companies are indeed similarly situated for constitutional purposes”).

49. *Jordan*, 75 Cal. App. 4th at 462, 89 Cal. Rptr. 2d at 342.

50. *Tracy*, 519 U.S. at 298-300.

51. *Id.*

52. *Jordan*, 75 Cal. App. 4th at 464, 89 Cal. Rptr. 2d at 343-44.

53. CAL. CONST. art. XIX, § 2.

54. *Jordan*, 75 Cal. App. 4th at 464, 89 Cal. Rptr. 2d at 343. *See* CAL. REV. & TAX. CODE § 6262(d) (West 1998) (proclaiming that revenues received from the smog impact fees should “be deposited in the General Fund through June 30, 1998”).

55. *See* CAL. CONST. art. XIX, § 7 (exempting any fees or taxes collected under the Sales and Use Tax Law from the scope of Article XIX).

56. *See Jordan*, 75 Cal. App. 4th at 458, 89 Cal. Rptr. 2d at 339 (recounting the trial court’s finding that California-certified vehicles were not cleaner than federally-certified cars; hence, the only distinction was the origin of the vehicle).

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.* at 464, 466, 89 Cal. Rptr. 2d at 343, 345.

61. *Id.* at 468, 89 Cal. Rptr. 2d at 346.

reversal is that the other 1.5 million vehicle owners were not parties to this suit, nor was *Jordan* a class action on behalf of all persons who paid the fee.⁶²

The aftermath of *Jordan* brought mixed emotions. Those who paid the fee finally had a valid, judicially-backed reason for claiming that the fee was unfair and unjust.⁶³ However, these same people were left with uncertainty and confusion about exactly how this decision would affect them and what steps they needed to take to get back the money the government had illegally taken from them.⁶⁴

III. CHAPTERS 31 AND 32

Chapters 31 and 32 attempt to alleviate some of the frustrations experienced by those who paid the unconstitutional charge. The companion measures repeal California's Smog Impact Fee and issue refunds to those out-of-state motorists who actually paid the fee.⁶⁵ In addition to the provisions described below, each bill contains a section detailing the Legislature's intent to repeal prior law establishing the fee, to create an expedited system for issuing refunds, and to appropriate sufficient capital necessary for the refund process.⁶⁶

Chapter 32 repeals those code sections that previously imposed smog impact fees.⁶⁷ This chapter creates a "Smog Impact Fee Refund Account" (Refund Account) and specifies that \$665,261,000 should be transferred from the General Fund into the Refund Account for the purpose of providing refunds.⁶⁸ Chapter 32 states that these refunds should include, in addition to the \$300 fee, the amount of any penalty incurred by the registrant for late payment and any interest that has accrued since payment of the fee.⁶⁹ It also specifies the accounting procedure for any money remaining in the Refund Account after the three year period passes; for example,

62. See *id.* at 467, 89 Cal. Rptr. 2d at 346 (expressing that plaintiffs themselves do not constitute the entire class affected by the fee and that requiring defendants to refund the fee to all motorists who paid it would be, "in effect, entering a judgment of refund in favor of those taxpayers"; see also *Bronco Wine Co. v. Frank A. Logoluso Farms*, 214 Cal. App. 3d 699, 717, 262 Cal. Rptr. 899, 910 (1989) (explaining that "[f]or over [fifty] years California has recognized that a judgment may not be entered either for or against one who is not a party to an action").

63. See *Courts Put End to Smog Tax Shakedown*, ORANGE COUNTY REG., Oct. 7, 1999, at B8, available in 1999 WL 30106470 (expressing satisfaction at the Court of Appeal's ruling in light of the "dishonesty with which the fee [was] promoted").

64. See, e.g., Walters, *supra* note 2, at B9 (discussing the different approaches for issuing refunds proposed by Democrats and Republicans).

65. See generally 2000 Cal. Legis. Serv. ch. 31, sec. 1(e), at 82-83 (outlining the manner in which the former law is to be repealed and refunds are to be issued in accordance with Chapters 31 and 32).

66. 2000 Cal. Legis. Serv. ch. 32, sec. 1(e), at 86.

67. See *id.* sec. 2, at 86 (repealing Section 6261 of the Revenue and Taxation Code); *id.* sec. 3, at 86 (repealing Section 6262 of the Revenue and Taxation Code).

68. CAL. REV. & TAX. CODE § 6909(a) (enacted by Chapter 32).

69. See *id.* § 6909(b) (enacted by Chapter 32) (stating that the amount of interest will be determined according to sections 1673.2 and 1673.4 of the Vehicle Code).

from checks mailed to the wrong address and sent back to the DMV,⁷⁰ or from any refunds that have not been claimed by the deadline.⁷¹

Chapter 31 lays the administrative groundwork and appropriates \$10,984,000 to the DMV to cover the cost of issuing refunds.⁷² It provides that anyone who paid the fee between October 15, 1990, and October 19, 1999, is eligible to file a claim for a refund within three years from the date this legislation became effective: June 8, 2000.⁷³ In addition, it requires the DMV to contact those who paid the fee during this nine year period, either by acknowledging claims for refunds that were received before passage of this legislation or by searching its records to determine the identity of each "registered owner or lessee"⁷⁴ who paid the fee and mailing such person a refund notification form.⁷⁵ When these forms are returned, the DMV must then verify the information supplied by the claimant, provide the claimant with a refund of the fee according to Chapter 32,⁷⁶ and issue a notice with the checks identifying them as refunds of the unconstitutional smog impact fee.⁷⁷

Chapter 31 also addresses a potential trouble spot in the refund process—competing claims between the registered owner or lessee of the vehicle in question and some other person.⁷⁸ One who is not a registered owner or lessee is given thirty days in which to file a claim for a refund.⁷⁹ If this is done, the DMV will give notice of the competing claim to the owner of record, and she will have three years to formally oppose payment of the refund to this other claimant.⁸⁰ If the registered owner or lessee decides to challenge disbursement to the other person, the DMV will issue her the refund.⁸¹ The other claimant may then bring an action in small claims court against the registered owner or lessee.⁸²

70. See *id.* § 6909(c) (enacted by Chapter 32) (stating that if a refund is returned to the DMV because of an incorrect mailing address the money should stay in the Refund Account until the DMV can find the correct address, or the three-year deadline passes).

71. See *id.* § 6909 (d) (enacted by Chapter 32) (providing that any balance left in the Refund Account after the three year deadline should revert to the General Fund).

72. 2000 Cal. Legis. Serv. ch. 31, sec. 9, at 84.

73. CAL. VEH. CODE § 1673.2(c)(1)-(2) (enacted by Chapter 31).

74. See *id.* § 1673 (enacted by Chapter 31) (defining "registered owner or lessee" as "the person or persons to whom the registration or title was issued when the transaction that included the imposition of the smog impact fee . . . was completed").

75. *Id.* § 1673.2 (a)(1)-(2) (enacted by Chapter 31).

76. *Id.* § 1673.2 (a)(3) (enacted by Chapter 31).

77. *Id.* § 1673.7 (enacted by Chapter 31).

78. *Id.* § 1673.4 (enacted by Chapter 31); see also Carl Ingram, *Smog Fee Refund Stalled by Car Dealers Dispute*, L.A. TIMES, Mar. 13, 2000, at A3, available in 2000 WL 2220151 (alleging that Chapters 31 and 32 were stalled for several weeks while legislators argued with car dealers about how to handle disputes as to whether they or their customers were entitled to the refund).

79. CAL. VEH. CODE § 1673.4(a) (enacted by Chapter 31).

80. *Id.* § 1673.4(b) (enacted by Chapter 31).

81. *Id.*

82. See *id.* § 1673.4(c) (enacted by Chapter 31) (providing that any small claims action brought by a second claimant must be filed within three years from the date the original refund was issued); *id.* § 1673.4(d) (enacted by Chapter 31) (stating that the State of California will not be a party to any of these small claim suits).

IV. ANALYSIS OF THE NEW LAWS

Chapter 31 requires the DMV to contact those who paid the Smog Impact Fee—a process which entails searching its records to ascertain the identity of those eligible for a refund and then notifying them.⁸³ While such a task may not seem onerous on its face, several difficulties have become apparent in the early stages of the refund process.⁸⁴ Indeed, since 1.7 million Californians are eligible to receive a rebate, the issuing of refunds will certainly be a complex and time-consuming ordeal and may potentially create even more frustration for already weary claimants.⁸⁵

Though Chapters 31 and 32 require the DMV to issue refunds “promptly,”⁸⁶ in reality the formalities of this process may take several months.⁸⁷ In spite of the steps that the DMV has taken to expedite this procedure, such as creating a website on which applicants may file refund claims, the process of locating persons who may not be aware of their eligibility and processing the approximately 1.7 million checks will draw out the process and cost the government nearly eleven million dollars over the amount of the refunds themselves—\$665 million.⁸⁸

The paperwork required of claimants may also prove to be laborious. For example, although Chapters 31 and 32 were effective June 8, 2000, some Californians did not receive notice of their eligibility for a refund until September of 2000.⁸⁹ The claimant then must sign this form, return it to the DMV and wait for it to be processed—a procedure which may itself take several months to complete.⁹⁰ Additionally, there are forms which must be completed if the claimant has changed addresses or if she has registered the vehicle under a different name.⁹¹

Disputes over who is entitled to a given rebate may also cause a delay in payment.⁹² Persons other than the registered owner or lessee of a vehicle were given

83. *Id.* § 1673.2(a)(1) (enacted by Chapter 31).

84. See generally Carl Ingram, *California and the West: Smog Fee Refund Bills Ok'd by Legislature Finances*, L.A. TIMES, May 26, 2000, at A3, available in 2000 WL 2244947; Capps, *supra* note 4, at A4 (discussing the potential problems of resource allocation and cost in the issuing of refunds).

85. *Id.*; see also Prabha Natarajan, *California Department of Motor Vehicles to Move to Former Army Depot*, KNIGHT RIDDER TRIB. BUS. NEWS, July 20, 2000, in 2000 WL 24231901 (relating that the DMV was forced to rent to a large building and increase its number of on-site staff from 120 persons to 285 in response to the expected large volume of refund requests).

86. Ingram, *supra* note 84, at A3.

87. See Department of Motor Vehicles, *Smog Refund FAQ*, available at <http://www.dmv.ca.gov/online/smoginq/smogreffaq.htm> (last visited Aug. 2, 2000) [hereinafter DMV Website] (announcing that those persons who submitted a claim for a refund before the Legislation was passed on June 8, 2000 would probably not receive their money in the mail until mid-August) (copy on file with the *McGeorge Law Review*).

88. Capps, *supra* note 4, at A4.

89. DMV Website, *supra* note 87.

90. *Id.*

91. *Id.*

92. See Ingram, *supra* note 78, at A3 (providing as an example, disputes between used car dealers and their customers over who is entitled to the refund. The author notes that in some transactions the fee was included as a line item in the sales contract and thus paid by the customer, while in others the dealer paid the fee when the vehicle was purchased for resale in California).

a thirty day period in which they could file a claim for a refund.⁹³ If a second individual filed such a claim, the registered owner or lessee will receive a "Notice of Other Claimant" which gives her the opportunity to either approve or oppose payment of the refund to this other person.⁹⁴ If payment is approved, the refund process will continue as usual.⁹⁵ However, if the registered owner or lessee opposes payment to the other person, Chapter 31 dictates that these two claimants shall settle their dispute in small claims court.⁹⁶ While the above legislation gives such persons three years in which to file their claims,⁹⁷ in reality the actual process may take much longer depending upon the congestion of the docket in any given court.

V. CONCLUSION

The collection of smog impact fees clearly was, to use the words of Governor Davis, a "mistake" on the part of the state of California.⁹⁸ Though payment of the fees went unchallenged for several years, the *Jordan* decision established that the State never had a right to take this money from vehicle registrants under the guise of environmental protection.⁹⁹ Through Chapters 31 and 32, California is attempting to correct its considerable "mistake," by returning the ill-gotten money in the most efficient manner possible.¹⁰⁰ Although any hurdles may face refund claimants, these persons will certainly endure such minor impediments to secure the return of what is rightly theirs.

93. CAL. VEH. CODE § 1673.4(a) (enacted by Chapter 31); *see also* DMV Website, *supra* note 87 (setting forth that any such claim was to be received by July 8, 2000).

94. DMV Website, *supra* note 87.

95. *Id.*

96. CAL. VEH. CODE § 1673.4(c) (enacted by Chapter 31).

97. *Id.*

98. Hoge, *supra* note 1, at A19.

99. *See* Mendel, *supra* note 27, at A1 (reiterating the court's finding that money generated from the unconstitutional fee was not used for air quality purposes, and quoting Governor Davis as saying that the State has a "moral obligation" to return the money).

100. *Supra* note 66; 2000 Cal. Legis. Serv. ch. 31, sec. 1(e), at 90.